

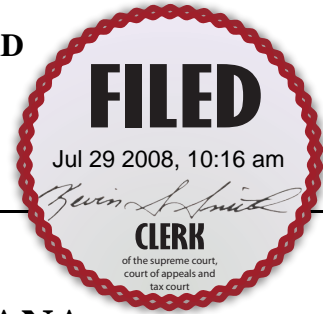
**Pursuant to Ind.Appellate Rule 65(D),  
this Memorandum Decision shall not be  
regarded as precedent or cited before  
any court except for the purpose of  
establishing the defense of res judicata,  
collateral estoppel, or the law of the case.**

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**IN THE  
COURT OF APPEALS OF INDIANA**

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EDNA TAYLOR, by her Guardian and Power of )  
Attorney, Roy Taylor, and EDNA TAYLOR )  
LIVING TRUST, )

Appellants-Plaintiffs, )

vs. )

BRIAN MILLER, )

Appellee-Defendant. )

No. 34A02-0803-CV-190

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APPEAL FROM THE HOWARD SUPERIOR COURT  
The Honorable George Hopkins, Judge  
Cause No. 34D04-0609-MI-0739

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**JULY 29, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**HOFFMAN, Senior Judge**

Plaintiff-Appellant Edna Taylor, by her guardian and power of attorney Roy Taylor, appeals the denial of her motion to correct error following the trial court's entry of judgment in favor of Defendant-Appellee Brian Miller.

We affirm.

The sole issue for our review is whether the trial court erred in denying Taylor's motion to correct error.

Taylor owns Lots 32 and 33 in an addition in the town of Tampico in Howard County, Indiana. Miller owns Lot 34, which is located adjacent to and west of Lot 33. There is a 12-foot wide undeveloped alley located between Lots 33 and 34. In August 2005, Miller filed a petition to vacate the alley, which the Howard County Board of Commissioners denied. Also in 2005, Miller demolished an existing residence on Lot 34, and built a new one. The new residence is set one-half foot farther to the west of Lot 33 than the demolished one.

In September 2006, Taylor filed a complaint against Miller wherein she apparently alleged that Miller trespassed on Lot 33 during the construction of his new home and deposited dirt, gravel, and other substances on Taylor's property, and that Miller's new house encroached upon the alley.<sup>1</sup> Taylor apparently asked the court to award her treble damages and attorney fees for the trespass and to issue a permanent injunction ordering Miller to remove the improvements on his property that encroach on the alley and violate the Howard County Zoning Ordinance regarding setback requirements.

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<sup>1</sup> Taylor does not include a copy of the complaint in her appendix.

At trial, Taylor presented the testimony of eight witnesses. Surveyor Jon Pyke testified that the town of Tampico has an historic reputation for being difficult to survey. Pyke further testified that he surveyed Taylor's property at Taylor's request, and could not determine whether Miller's new residence encroached on the alley. Pyke also testified that there was a potential error in his survey of up to three feet to the east or west. Glen Boise, Executive Director of the Howard County Plan Commission, testified that Jim Hunter, the Commission's former assistant director, measured the lots and house, and found no encroachment.

Also at trial, Jerry Hatfield, Miller's contractor, testified that he entered Taylor's property one time with Taylor's consent during the construction of Miller's home to remove paper debris and trash that had blown over to Taylor's property. Russell Adair, President of the Taylor Regional Sewer District, testified that in the fall of 2005, he installed a sewer system grinder pump in the alley along Taylor's property line. The installation of the pump was part of an overall sewer system plan along the entire street and was unrelated to the construction of Miller's new home. Adair later moved the pump at Taylor's request, and Taylor complained to Adair about the dirt and gravel left on her property.

At trial, Roy Taylor acknowledged that he had no proof of any damages caused by the encroachment. At the conclusion of the bench trial, the trial court entered findings of fact and conclusions of law at the request of both parties wherein the court concluded that Taylor failed to prove the allegations in her complaint. Specifically, the trial court concluded as follows:

6. The weight of the evidence fails to prove that the defendant removed any dirt from the Taylor property.
7. The weight of the evidence fails to prove that the defendant, his agents or representatives placed dirt or rocks on the Taylor property.
8. The plaintiff has failed in its burden to prove that a trespass, as defined in IC 35-43-2-2, has occurred. Thus its request for treble damages, attorney fees and reasonable costs of collection must fail.
9. The plaintiff has failed to prove any loss arising during or from the construction of the residence by the defendant.
10. To obtain an injunction the plaintiff must prove that its remedies at law are inadequate. The plaintiff has not made this showing.
11. The plaintiff has failed to prove the allegations of its complaint.

Appellant's App. at 10. Taylor filed a motion to correct error, which the trial court denied after a hearing. Taylor appeals the denial of the motion.

The trial court's decision on a motion to correct error comes to the appellate court cloaked in a presumption of correctness, and the appellant has the burden of proving that the trial court abused its discretion in denying the motion. *Page v. Page*, 849 N.E.2d 769, 771 (Ind. Ct. App. 2006). In making our determination, we may neither reweigh the evidence nor judge the credibility of witnesses. *Id.* Instead, we look at the record to determine if the trial court abused its discretion, a flagrant injustice has been done to the appellant, or the appellant has made a very strong case for relief. *Id.*

Taylor contends that the trial court erred in denying his motion because Miller trespassed on his property and is encroaching on the alley. According to Taylor, the evidence presented at trial does not support the trial court's findings and conclusions. However, our review of the evidence reveals that Miller's contractor testified that he entered Taylor's property one time during the construction of Miller's home to remove

paper and trash debris that had blown over to Taylor's property. Miller further testified that he had Taylor's permission to enter the property. This evidence supports the trial court's conclusion that Taylor failed to prove a trespass during the construction of Miller's new home. Taylor's argument invites us to reweigh the evidence, which we cannot do. *See Page*, 849 N.E.2d at 771.

Taylor further contends that the court erred in denying the motion because Miller's home encroaches on the alley. However, one of Taylor's witnesses testified that no encroachment had been found, and another testified that he could not determine whether or not there was an encroachment. This argument is another invitation for us to reweigh the evidence, which we cannot do. *See Page*, 849 N.E.2d at 771. The trial court did not err in denying the motion to correct error.<sup>2</sup>

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.

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<sup>2</sup> Taylor also argues that the trial court erred in denying her motion to correct error because the court erred in concluding that a property owner does not have standing to enforce Howard County Zoning Ordinance Section 8.8 when the property owner is "especially damaged" by a violation of the ordinance. Appellant's Brief at 8. Because we find that Taylor has not proven any damages, we need not address this issue.